

RIGHT-OF-WAY CLEARING CONTRACT

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THIS CONTRACT made and entered into this 26th day of May, 2021, between **ASPLUNDH TREE EXPERT LLC**, hereinafter called "Contractor" and **BEARTOOTH ELECTRIC COOPERATIVE, INC.**, of Red Lodge Montana, hereinafter called "BEC".

WITNESSETH:

The parties hereto hereby agree as follows:

1. **Scope of Work.** The Contractor understands that BEC is an electric cooperative utility and operates in Montana and Wyoming with transmission and distribution lines in easements it owns and controls and represents it is experienced in tree and brush trimming and removal near hazardous, energized power lines. These easements must be maintained to reduce the accumulation of trees and brush that may interrupt service if the trees or brush fall upon or contact the electric lines and to provide access for BEC to inspect and maintain such lines. The Contractor's work for 2021 shall include tree and brush removal and easement maintenance pursuant to this Contract in designated areas of Carbon, Stillwater, and Sweet Grass Counties of the State of Montana, and Park County of the State of Wyoming. Contractor shall furnish all the labor, materials, equipment, tools and services necessary to perform and complete the work.
2. **Term of Contract.** The term of this Contract shall be calendar year 2021, commencing on the date the Contract is executed by the parties. Notwithstanding, the above or any other provision of this Contract to the contrary, BEC shall have the right to terminate this Contract and all work and operations of the Contractor without cause and at its election, upon ten (10) days' notice to the Contractor. In such event, the Contractor shall be paid for all work performed pursuant to the provisions of this Contract prior to the date of termination.
3. **Payment to Contractor and Cap on Payment.** Subject to the provisions of paragraph 18 of this Contract, BEC shall pay to Contractor, and Contractor shall accept as full payment for the performance of the work pursuant to this Contract such hourly rates, payments, and other costs specified on Schedule A attached hereto. The Contractor may request bimonthly payments by submitting to BEC by the last business day of each bimonthly period an itemized invoice for work completed. Such invoice shall detail daily personnel, equipment, and expenditures of time employed by Contractor in fulfilling its obligations under this Contract. Notwithstanding the above or any other provision of this Contract to the contrary, the Contractor shall not perform any work pursuant to this Contract which would require BEC to pay any amount greater than the total sum of \$100,000 for such work cumulative from the commencement of services under this Contract unless the Contractor is authorized in writing to do so by BEC. It is, therefore, understood that the total amount to be paid to the Contractor pursuant to this Contract is a sum no greater than \$100,000 unless authorized by BEC as provided above.
4. **Commencement of Work.** The Contractor shall begin performance of this Contract within ten (10) days following execution of this Contract, unless another start date is mutually agreed upon.
5. **Duties of Contractor.** The following conditions shall govern the Contractor while performing its duties and responsibilities pursuant to the terms of this Contract:
 - A. **Erosion Prevention and Damage Control.** Contractor shall perform clearing operations in a manner reasonably calculated to minimize soil erosion and damage to a landowner's property where the Contractor is performing its work, particularly in sensitive areas, including lawns, homes, and outbuildings.
 - B. **Tree Stumps.** Tree stumps shall be cut flush with the ground. All brush over 18 inches in height will be cut. Brush will be cut to within 2 inches of ground line.

- C. **Tree Limbing.** Trees which originate outside of the right-of-way easement but have branches encroaching into the right-of-way shall be felled, if agreed upon by a landowner, otherwise trimmed per Specification M1.30G and the National Electric Safety Code (NESC) C2-2002-2 I 8(AI) attached hereto as Exhibit "B". If the tree trunk diameter at conductor level is greater than 6 inches, the encroachment tree may be side trimmed.
 - D. **Healthy Trees.** Healthy trees with no cat face, bug damage, dead top, or lightening damage with a trunk diameter of 12 inches or greater at conductor level and located inside the right-of-way, but no closer than 7.5 feet from trunk to energized conductor of 20' corridor may be limbed as per Specification M1.30G and the National Electric Safety Code (NESC) C2-2002-2 I 8(AI) attached hereto as Exhibit "B" should appearance be a material consideration.
 - E. **Limbed Trees.** Trees that are limbed shall be limbed from ground level to 12 feet above conductor level. Limbs shall be cut as close to the trunk as reasonably possible.
 - F. **Dead Trees.** All dead trees standing outside of the right-of-way which can reach the line conductors shall be felled, if agreed upon by landowner. No tree with signs of decay or physical damage will be trimmed. These trees must be felled. If a landowner refuses to agree that trees as described in this paragraph may be felled, the Contractor shall mark the location of any such tree in reference to the right-of-way and on the Project map and immediately notify BEC.
 - G. **Chipping.** All material less than 10 inches in diameter will be chipped. Larger material will be left lying and uncut from butt to 10-inch diameter and will be laid parallel to the right-of-way on either side of the right-of-way boundary. All material that is greater than 50-foot distance from access by a vehicle shall be scattered or piled per land owner request. Driving trails in corridor shall be kept clear.
 - H. **Secondary Drops.** Low voltage secondary drops extending to the customer meter will be cleared of any limbs to a distance of no less than 18 inches of conductors.
 - I. **Inspections by Contractor.** Contractor will be cognizant of the general condition of the power line facility and take notes of any damaged conductors, low clearance, or broken poles and insulators and report damage deficiencies in writing to BEC Line Superintendent, Eric Elton.
 - J. **Notification.** BEC will notify all landowners in advance of commencement of work, via First Class Mail. However, as a courtesy, Contractor shall make contact with all land owners (in person or by phone) and advise them of their tentative work schedule. Contractor shall obtain permission from appropriate landowner to park equipment after normal working hours. Contractor shall have company logo displayed on all vehicles.
 - K. **Riparian Areas.** Riparian areas shall be trimmed as instructed by the USFS, BLM, Department of State Lands, and other government agencies that may have jurisdiction in this area. Specifically, no trees or brush less than 3/4 the height of minimum sag of the lower conductor shall be cut within 300' of streams, marshes, lakes or wetlands.
6. **Project Safety.** The Contractor is exclusively responsible for and in control of project safety. The Contractor agrees to develop and maintain for the duration of this Contract, its own safety program that will effectively incorporate and implement all safety provisions. The Contractor agrees to follow the American National Standards Institute, Standard Z1 33.1-2006 for pruning, trimming, repairing, maintaining and removing trees and cutting brush in a safe manner.
7. **Contact Persons and Work Location.** Contractor shall provide BEC with contact information (cell phone, radio, etc.) of supervising field employees. Contractor shall communicate daily with Line

Superintendent, Eric Elton (406-425-2994), who will provide Contractor with locations for the Contractor's work.

8. **Qualified Line Clearance Tree Trimmers.** A qualified line clearance tree trimmer as defined by OSHA rule 1910.269 shall be present with the Contractor's crews at all times. The qualified line clearance tree trimmer shall be thoroughly familiar with the OSHA 1910.269 provisions related to tree trimming near energized conductors. If the tree trimmer is standing or belted within 10 feet of energized conductors there shall be a 2nd qualified line clearance tree trimmer within voice distance (per OSHA: the 2nd qualified person may be a line clearance trainee). Trees or tree limbs within minimum approach distance (MAD) must be cut using a tested, insulating tool or from a tested, insulated bucket truck. The Contractor must provide all of the following documentation for the qualified line clearance tree trimmer/trainee:
 - A. A written certification signed by a qualified individual for the qualified line clearance tree trimmer who will be working on the clearing project. This certification must be signed by the employer of the tree trimmer or by a trained instructor. Certificate must have been signed and dated in 2021 if previous years certificate is presented it must be accompanied by proficiency tracking for each year following the date of certification.
 - B. CPR and basic First Aid cards for the qualified tree trimmer.
9. **Fire Prevention.** Contractor shall take all reasonable and practicable action to prevent and suppress fires resulting from Contractor's operations. Contractor shall provide and maintain in good working order all fire prevention and suppression equipment required in connection with the project under federal, state, county and local laws and regulations.

Any internal combustion engine used, driven or operated in connection with work performed under this Contract shall be equipped with a modern, efficient, and adequate spark arrester to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of the engine.
10. **Withholding of Payments.** BEC may withhold money due for any portion of the work if the Contractor is in default of any provisions of the Contract or which has been rejected by BEC and has not been corrected by the Contractor to the satisfaction of BEC.
11. **Changes in Work.** BEC may make changes in the work by altering, adding, or deducting from the work. No change in the Contract price shall be made for minor changes not involving extra costs. All adjustments in the Contract price by reason of any change in the work shall be agreed to in writing and signed by the parties before such change is commenced.
12. **Standard of Work.** All work performed under this Contract shall be done in a good and workmanlike manner and shall conform to the RUS Standards, attached as Exhibit "B".
13. **Damage Repair.** Any damage to a landowner's property or property of BEC caused in whole or in part by any act or omission of Contractor, or anyone directly or indirectly hired by Contractor shall immediately be repaired at the expense of the Contractor, including the cost of labor, materials and equipment. The Contractor's obligation to repair damage under this paragraph 13 shall survive the termination of this Contract.
14. **Work Defect.** The Contractor shall correct at his expense, all defects and deficiencies in the work or deficiencies caused by reason of the failure of the Contractor to follow the terms of this Contract. BEC will provide the Contractor with a written notice of any defects or deficiencies in the work performed or failure to be performed. Contractor will have ten (10) days from the date of mailing of the notice in which to correct or cure the deficiency or perform the requested work. If the defects or failed work are not performed within ten (10) days, BEC may proceed to cure such defects and deduct the costs thereof from any amounts owed to the Contractor at the time of the defect is cured.

15. **Completion on Contractors Default or Breach.** If Contractor shall default in the performance of any of the terms or conditions of this Contract or it breaches the terms thereof, BEC without in any manner limiting its legal and equitable remedies in the circumstances may serve upon the Contractor a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within ten (10) days after the service of such notice upon the Contractor such default shall be corrected, or arrangements made for the correction thereof satisfactory to BEC, BEC may take over the performance of the Contract and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to BEC for any cost or expense in excess of the Contract price occasioned thereby. BEC's decision that a default has occurred is final.
16. **Law and Regulations.** The Contractor shall comply with all federal, state, county and municipal laws, ordinances and regulation applicable to the performance of the work and give all notices that may be required. If the Contractor observes that the work to be performed is at variance with any law, ordinance or regulation, he shall promptly notify BEC. The Contractor shall perform his work in such a manner as to maximize preservation of beauty, conservation of natural resources and minimize marring and scarring of the landscape and silting of streams. BEC may request Contractor to apply chemicals or herbicides in specific areas in an effort to control vegetation growth. This determination will be made jointly with BEC, the Contractor, and the landowner. In the event chemicals or herbicides are used, the Contractor shall not deposit trash in streams or waterways and shall not deposit herbicides, or other chemicals or their containers in or near streams, waterways or pastures. All trash, herbicides or chemicals, and containers shall be returned to the Contractor's business premises.
17. **Inspection of Work.** BEC may inspect the work and may maintain inspectors on the job site to insure that work is performed in accordance with the terms of this Contract, provided, however, that any such inspectors or employees of BEC shall not have authority to direct or advise the Contractor or his employees or agents concerning the method or manner by which the work is to be performed.
18. **Independent Contractor .** The Contractor has sole authority, responsibility and control over the method and manner by which the work is to be performed and shall remain in all respects as independent contractor. The Contractor will provide BEC with an original watermark Independent Contractor Exemption Certificate for all work being performed pursuant to the rules and regulations of the State of Montana for independent contractor status showing Contractor to be certified as an independent contractor by the State of Montana for year 2021.
19. **CDL License and Drug Test.** All commercial motor vehicle (CMV) operators employed by the Contractor must have a Class A commercial driver's license (CDL), and a current medical certificate for DOT compliance. Prior to commencing work for BEC, the Contractor will provide proof of participation by all operators in a drug testing program in compliance with the Federal Department of Transportation requirements. Such drug testing program must confirm a negative pre-employment test within ninety (90) days prior to commencement of work or present participation in a random test pool.
20. **Insurance.** Contractor shall purchase and maintain liability and other insurance with liability limits not less than the amounts set forth below as is appropriate for the work being performed and furnished and as well provide protection from claims which may arise out of or result from Contractor's performance and furnishing of the work and Contractor's other obligations under this Contract, whether it is to be performed or furnished by Contractor, or supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the work, or by anyone for whose acts any of them may be liable:
 1. **Worker's Compensation.**
 - (a) Independent Contractor Exemption Certificate issued by the Montana Department of Labor and Industry or Worker's Compensation Coverage; Statutory
 - (b) Employer's Liability \$ [1,000,000]

B. Contractor's Liability Insurance

- | | | |
|-----|------------------------------------|-----------------|
| (a) | General Aggregate | \$ [2,000,000] |
| (b) | Products-Completed Operations | \$ (2,000,000] |
| (c) | Aggregate Personal and Advertising | \$ [1,000,000] |
| (d) | Injury | \$ [1,000,000] |
| | Bodily Injury and Property | |
| | Damage Each Occurrence | |

C. Contractual Liability Insurance

- | | | |
|-----|-------------------------------------|----------------|
| (a) | General Aggregate | \$ [2,000,000] |
| (b) | Each occurrence | \$ [1,000,000] |
| | (Bodily Injury and Property Damage) | |

D. Automobile Liability

- | | | |
|-----|---|----------------|
| (a) | Combined Single Limit (bodily injury and property damage) | |
| | Each Accident | \$ [1,000,000] |
| (b) | Coverage to Include: | |
| | (i) All owned | |
| | (ii) Hired | |
| | (iii) Non-owned | |

The insurance policy must name Beartooth Electric Cooperative, Inc. as an additional insured and be written on a "primary-noncontributory basis", to the extent of the contractor's obligations under the contract. The additional insureds shall fully cooperate with the Contractor and its insurers on any claim. However, such cooperation shall not be deemed an admission or acknowledgment of any liability on the part of BEC or affect any requirement of the contractor to indemnify BEC under the provisions of this Contract. Each coverage shall be obtained from an insurance company that is duly licensed and authorized to transact insurance business and write insurance within the State of Montana and is acceptable to BEC.

21. **Insurance Certificate.** The Contractor will furnish to BEC a certificate evidencing insurance coverage as hereinabove specified. The certificate shall provide that a thirty (30) day notice must be given to BEC before there can be any cancellation or material changes in the coverage.
22. **Time to be of the Essence.** As to this Contract, time shall be of the essence.
23. **Waiver.** A waiver by BEC of any default or breach by Contractor of any covenants, terms, or conditions of this Contract does not limit BEC's right to enforce such covenant, terms, or conditions or to pursue BEC's rights in the event of any subsequent default or breach by Contractor.
24. **Indemnification.** At Contractor's sole expense Contractor shall indemnify, defend and hold harmless BEC, its employees, successors, and assigns ("Indemnified Parties"), from and against any and all claims for bodily injury, death, or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs and reasonable attorneys' fees) ("Claims") which arise or from the work performed, materials furnished, or services provided under this Contract by Contractor or its agents. These indemnity and defense obligations shall apply to the extent of the acts or omissions, negligent or willful misconduct of Contractor, its employees or agents, whether active or passive. Said indemnity and defense obligations shall further apply, whether or not said claims arise out of the concurrent act, omissions, or negligence of

the Indemnified Parties, whether active or passive. To the extent provided by Montana law Contractor shall not be obligated to indemnify, defend, or hold harmless the Indemnified Parties for claims found by a court to be due in whole or in part to the negligence, or willful misconduct of the Indemnified Parties.

Contractor's indemnification and defense obligations hereunder shall extend to claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated or determined that any actions against the indemnified Parties for such matters which are indemnified hereunder settled or barred by applicable laws.

25. **Attorney Fees.** If suit is brought for interpretation, enforcement or breach of any provisions in this Contract, then the unsuccessful party agrees to pay on demand, all costs, charges and expenses of the prevailing party including reasonable attorney and paralegal fees.
26. **Applicable Law and Venue.** This Contract shall be governed by the law of the State of Montana. Any litigation pertaining to the terms and conditions of this Contract shall be filed in the District Court of the Twenty-Second Judicial District in and for Carbon County, Montana.
27. **Integration.** This Contract and all Exhibits attached hereto constitute the entire Contract of the parties. Covenants or representations not contained therein or made a part thereof by reference, are not binding upon the parties. There are no understandings between the parties other than as set forth in this Contract. All communications either verbal or written, made prior to the date of this Contract are hereby abrogated and withdrawn unless specifically made a part of this Contract by reference.
28. **NOTICE.** Any notice to be given hereunder may be served upon a party personally or served by registered or certified mail addressed to the parties at the following addresses:

BEC: Beartooth Electric Cooperative, Inc.
Line Superintendent C/O Eric L. Elton
P.O. Box 1110
Red Lodge, MT 59068 Tele. #: (406) 446-2310
Fax #: (406) 446-3934

CONTRACTOR: Asplundh Tree Expert LLC.
Jon-Paul Paulson Region 172
20004 144th Ave NE
Woodinville, WA 98072
Cell (406) 363-5807
Office (425) 483-9339

A notice served by mail shall be deemed served when deposited in any United States Post Office. Any change of address shall not be effective unless served upon the parties in the same manner as the notice referred to herein. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice.

28. **Examination.** The Contractor represents that he has made a careful examination of the site of the work project and of the work to be performed and is fully informed as to the nature of the terrain and all other conditions which may affect his work under this Contract.
29. **Assignment.** Contractor shall not assign this Contract or any part thereof, or enter into any contract with any person, firm, or corporation for performance of the Contractor's obligations hereunder or any part of such obligations, without the prior written approval of BEC.
30. **Third Parties.** This Contract constitutes a 11 agreement solely between the parties and is not intended to and will not confer any rights, remedies, obligations or liabilities, legal or equitable, including any right

of employment, on any person or otherwise be construed so that any person or entity is deemed a third party beneficiary under or by reason of this Contract.

31. **Captions.** The paragraphs herein have been captioned for convenience only and none of the captions shall be utilized in construing the meaning of this Contract.
32. **Binding.** This Contract shall be binding upon the parties hereto, their legal representatives and assigns.

ASPLUNDH TREE EXPERT LLC, (CONTRACTOR)

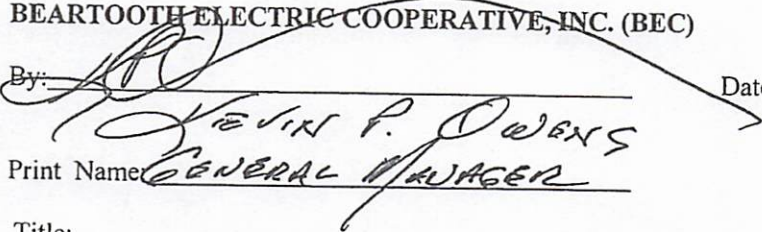
By:  _____

Date: July 12, 2021

Print Name: Shawn J. Shapiro

Title: Vice President, Sponsor

BEARTOOTH ELECTRIC COOPERATIVE, INC. (BEC)

By:  _____

Date: 6-30-21

Print Name: KEVIN P. OWENS
GENERAL MANAGER

Title: _____

Schedule A



Beartooth Electric 2021 Rates

Effective January 1 through December 31, 2021

Labor	Straight	Overtime	Double Time
Crew Leader/Foreman	\$ 61.92	\$ 87.78	\$ 104.24
Tree Trimmer	\$ 56.29	\$ 76.81	\$ 98.75
Trimmer Trainee	\$ 51.79	\$ 71.32	\$ 93.27
Groundman	\$ 41.15	\$ 60.35	\$ 71.32
Mowing Operator	\$ 73.46	\$ 104.24	
50/55' Standard Lift	\$ 14.86		
Split Dump	\$ 10.25		
Chipper	\$ 4.61		
Other Equipment			
55' Squirt Boom w/elevator	\$ 20.50		
55' 4x4 Lift	\$ 25.63		
60/70' Elevator Lift	\$ 20.50		
100' Lift Double Bucket	\$ 97.39		
55' Timber Jack	\$ 38.44		
Split Dump w/Man Cab & ROW Tools	\$ 12.81		
BC1500 Vermeer Chipper w/winch	\$ 10.25		
Slashbuster Mower 160 w/Support Truck	\$ 154.54		
SkidSteer Mower w/Support Truck and Trailer	\$ 144.38		
Jarraff w/Support 4x4 Pickup	\$ 75.35		
Fire Wagon	\$ 12.30		
4x4 ATV/UTV	\$ 6.15		
Spray Truck 1 Ton 4x4 w/300 Gal. Tank	\$ 18.20		
4x4 Spray Rig w/200 Gal. Tank	\$ 15.38		
Rental Equipment	Cost + 10%		

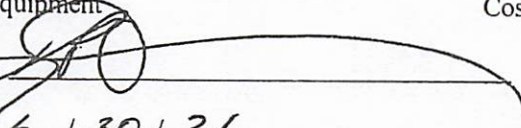
Signature: Date: 6/30/21Title: GENERAL MANAGER

Exhibit "B"

